IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6517 OF 2006

M/s.Asian Marble Industries ..Petitioner
(Orig.Defendant no.2)

Vs.

Shri Motilal Salecha ..Respondent no.1
(Orig.Plaintiff)

And

M/s.Shree Balaji Developers ..Respondent no.2
(Orig.Defendant no.1)

Mr.A.H.Palekar i/b M/s.S.Ashwinikumar and Co. for the petitioner

Mr.A.M.Saraogi for respondent no.1

CORAM : A.P.DESHPANDE, J

DATED : 22ND NOVEMBER, 2006

P.C.:

1. The respondent no.1 herein instituted a suit for declaration and injunction in respect of a suit premises being B/201, Second Floor, 'Kotia Nirman' Building, situated at Ambivali Village, Andheri Link Road, Andheri (West), Mumbai 58. While the proceedings were pending on the file of City Civil Court at Bombay, the respondent claims

to have lost the possession during the pendency of the suit in between 19.5.06 and 24.5.06. With a view to bring the said subsequent event on record, a Chamber Summons no.743 of 2006 was taken out with a view to carry out amendment in the plaint. The City Civil Court at Bombay allowed the amendment and being aggrieved thereby, the present writ petition has been filed.

2. What is relevant to notice is that the plaint was filed on the basis of an averment that the plaintiff was in possession of the premises and as he sought to amend the plaint by contending that he has lost the possession during the pendency of the suit, the City Civil court allowed the same.

3. The learned counsel for the petitioner has contended that the plaintiff was never in possession of the suit premises on the date on which the plaint was filed and, thus, the story put forth in regard to the loss of possession during the pendency of the suit is wholly unsustainable and devoid of truth.

4. These are the facts that the parties will have to plead and establish before the trial court during the trial. It is not possible to prejudge the issue while allowing the amendment.

5. Perused the order. It does not call for any interference. Thus, the writ petition is summarily dismissed.

(SHRI A.P.DESHPANDE, J)